



Sedition Law: A colorable piece of legislation

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ABSTRACT

In India where freedom of speech and expression is considered as the most vital right of the citizen given by our constitution, Sedition is still considered as a crime. The aim behind bringing the Sedition law in colonial India by Britishers was in order to curb those voices which stood against the unfair and misgovernance of the Crown. The main purpose behind including the Article 124A then was to suppress the freedom of the Indian citizens and strengthen the British rule. The object of legislature behind keeping the law was to punish those who had been sowing hatred feelings against the Government. In recent times the courts have expressed that every criticism against the state or government doesn't lead to sedition. Right to question and criticize the government are the very right in a democratic nation. The term "disaffection" used under section 124A of Indian Penal Code, 1860 is vague and interpreted according to the whims and fancies of the investigation officers or the court. The work aims wholesomely at the need of the law to be repealed or reconstructed according to the changing times and to restore the democracy. The soul of the democracy, freedom of speech and expression shall be reserved. There shall be some limitation drawn in order to maintain peace and order in the country but the same do not mean to restrict the public to express their feelings and views on the Government and their actions.

KEY WORDS: *Sedition Law, Freedom of Speech and expression, Democracy, Government.*

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INTRODUCTION

Act of Sedition includes bringing or attempting to bring contempt, hatred or disaffection towards the government. Further, the explanations to the section clarify that mere disapprobation of measures or actions of government, intended to bring a constructive change by lawful means, without arising feelings of hatred, contempt or dissatisfaction does not amount to sedition. Term Sedition is defined under section 124A of Indian Penal Code, 1860 as “Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine”. Explanation I, II and III speak about the expression “disaffection” which includes disloyalty and all feelings of enmity, Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation and Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.¹ In *Raghuvir Singh v. State*² the court observed that the authorship of seditious material alone is not the gist of the offence of sedition. Distribution and circulation of seditious materials may also be sufficient. Sedition is a law which criminalizes speech which is regarded as disloyal towards the nation or national security and not the Government. The constitutionality of the sedition shall be limiting its application to “acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence” *Kedarnath case*³.

HISTORY

In British Era, the law was enacted when law makers believed that only good opinion on government policies shall survive. It was originally drafted in the year 1837 by Thomas Macaulay under section 113 but the same was surprisingly not included in the Indian Penal Code, 1860. Section 124A was inserted in the year 1870 by an amendment by Sir James Stephen.

¹ Indian Penal Code, 1860, S. 124A

² AIR 1987 SC 149: 1987 Cr LJ 157.

³ AIR 1962 SC 955.



Some of the most famous trials during 19th century and early 20th century for the sedition were against the Indian nationalist and leaders. The first such instance was Jogendra Chandra Bose⁴ in 1891 where the editor Bose published an article in his own magazine named Bangobasi, criticized the Age Consent Act, 1891 and was charged with sedition for criticizing the Age of Consent Bill and the negative economic impact of British colonialism. While directing the jury on the case, the Court distinguished sedition as was understood under the Law of England at that time, from section 124A IPC. It was observed that the offence stipulated under section 124A IPC was milder, as in England any overt act in consequence of a seditious feeling was penalized, however in India only those acts that were done with an intention to resist by force or an attempt to excite resistance by force fell under this section. In Queen Empress v. Bal Gangadhar Tilak, the defendant was accused of sedition for publishing an article in newspaper- Kesari invoking the example of the Maratha warrior Shivaji to incite overthrow of British rule. The most famous sedition trial after Tilak's was the trial of Mohandas Gandhi in 1922. Gandhi was charged, along with Shankerlal Banker, the proprietor of Young India, for three articles published in the magazine. Later, Supreme Court in Kedar Nath Singh case upheld the validity of sedition under Section 124A and stated that it was constitutional since it imposed a reasonable restriction on Article 19(1) (a). Further, the holding that acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence would be made penal by Section 124A⁵. Further, the ICCPR provides that in order for a restriction on freedom of expression to be permissible, the Government must discharge the onus of proving that the restriction is: (a) provided for by law, (b) necessary, and (c) in pursuit of one of the legitimate aims set forth in the Article. It is submission of the Petitioners that Section 124A as a restriction of freedom of expression falls short of these requirements in that it is neither 'necessary' nor sufficiently 'provided by law'.⁶

SEDITION LAW CONTRARY TO FREEDOM OF SPEECH

⁴ (1892) ILR 19 Cal 35.

⁵ KedarNath Singh v/s State of Bihar (1962), SCR 767, AIR 1962 SC 955: (1962) 2 Cri LJ 103

⁶ Ashima Obhan and Akansha Dua, Obhan & Associates, New Delhi, How Incumbent Is Section 124A of the Indian Penal Code? – The Supreme Court Decides To Examine - Government, Public Sector – India, <https://www.mondaq.com/india/terrorism-homeland-security-defence/1065362/how-incumbent-is-section-124a-of-the-indian-penal-code-the-supreme-court-decides-to-examine>, 20th June, 2021.

The section kept drawing criticism in the independent India as well for being a hindrance to the right to free speech. Sedition was made a cognizable offence for the first time in history in India during the tenure of Prime Minister Indira Gandhi in 1973, that is, arrest without a warrant was now permissible. In 1962 the Supreme Court of India interpreted the section to apply only if there is, say, ⁷"incitement to violence" or "overthrowing a democratically elected government through violent means"⁸. This section openly criminalizes persons showing disaffection towards the government and not the nation. The Court has made several judicial pronouncements which were discussed to get an idea about "seditious acts". It could be stated that, unless the words used or the actions in question do not threaten the security of the State or of the public, it lead to any sort of public disorder which is grave in nature, the act would not fall within the ambit of section 124-A of IPC ⁹. John Stuart Mill advocated the importance to the freedom of speech and argued that for the stability of a society one must not suppress the voice of the citizens, how so ever contrary it might be. The right not only makes it possible for a society to put an opinion but also provides a platform to the suppressed and unheard people who wish to voice against any celebrated culture. Further a good government is the one where the "intelligence of the people" is promoted¹⁰. In a number of cases, scepticism has been expressed about the potential misuse of the sedition law. Justice A P Shah, in one of his article¹¹ warns about the very basis for the logic of a sedition law. He compares the idea of sedition to a parochial view of nationalism which often endangers the diversity of opinions rather than protect against rebellion.

The Constitution of India guarantees freedom of speech and expression, which means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. Fundamental rights contained in Article 19(1) are those great and basic rights which are recognised as the natural rights inherent in every citizen.¹² The sedition law harms and curbs the fundamental right of Indian citizen under Article 19(1) (a) of Indian Constitution in many ways. The morality and criminality do not co-exist, the Supreme Court held

⁷ Chandrachud, Abhinav (2021-02-22). "The Case to Amend Sedition Law, India's Self-Inflicted Wound". TheLeaflet. Retrieved 2021-03-05.

⁸ Utkarsh, Anand (2021-03-04). "Disagreeing with govt is not sedition, says SC". Hindustan Times. Retrieved 2021-03-05.

⁹Law commission of India, Consultation paper on "Sedition", pg 19, 2018.

¹⁰ *Id.* at pg 18, 19, 2018.

¹¹A P Shah, Free Speech, Nationalism and Sedition, Economic & Political Weekly, Vol. 52, Issue No. 16, 22 Apr, 2017.

¹² State of W.B. v. Subodh Gopal Bose, AIR 1954 SC 92.



that, free flow of the ideas in a society makes its citizen well informed, which will results into the good governance.¹³

a) Expression not amounting to Sedition

The Supreme court have been crystal clear in expressing that mere criticism against the state or Government doesn't intent to Sedition, solid reasons shall be taken in consideration before imputing the act on a person. The Supreme court in one of the recent case have observed that "a citizen has a right to criticize or comment upon the measures undertaken by the Government and its functionaries, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder; and that it is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124A and 505 of the IPC must step in"¹⁴. The Supreme Court has overturned a sedition conviction for sloganeers who shouted incendiary slogans shortly after the assassination of Indira Gandhi, on the grounds that the slogans raised did not lead to violence¹⁵. After independence, section 124A of IPC came up for consideration for the first time in cases, where the Punjab High Court declared section 124A IPC unconstitutional by observing that "*a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about*".¹⁶

b) Genuineness of Sedition law in India

The first case came before Supreme Court after independence relating to Sedition was Romesh Thappar v. The State of Madras¹⁷. The Supreme Court observed that The Act, as its preamble shows, is not intended for petty disorders but for disorders involving menace to the peace and tranquility of the Province, (2) There are degrees of gravity in the offence of sedition also and an isolated piece of writing of mildly seditious character by one insignificant individual may not

¹³S. Khusboo v. Kanniamal&Anr, AIR 2010 SC 3196.

¹⁴ Vinod Dua vs. Union of India & Ors, Writ Petition (Criminal) No.154 of 2020.

¹⁵Balwant Singh v. State of Punjab, (1995) 3 SCC 214.

¹⁶ Tara Singh Gopi Chand v. The State, AIR 1951 Punj. 27

¹⁷ Romesh Thapar v. State of Madras, AIR, 1950, 124.

also, from the layman's point of view, be a matter which undermines the security of the State, but that would not affect the law which aims at checking sedition. It was also said that the law as it stands may be misused by the State executive, but misuse of the law is one thing and its being unconstitutional is another. Further the court stated that they are concerned with the latter aspect only. The internet and social media have become vital communication tools through which individuals can exercise their right of “freedom of speech and expression” and exchange information and ideas. In recent days, many twitter and facebook content relating to political view which was decisive of the Indian government was taken down by these respective social media platforms and many citizens have been booked under sedition for exercising their legitimate constitutional right to “freedom of speech”. During CAA protests in 2019-2020 many people were arrested under sedition throughout India. For instance, a single mother of 11 year old in Bidar, Karnataka was booked for sedition for her daughter participating in anti- CAA protest. Similarly, a JNU student and more than 50 people from Mumbai supporting him were booked for the same. It was argues one of the cases that the Section 124A infringes upon the fundamental right of speech and expression, guaranteed under Article 19 (1) (a) of the Constitution of India, also that the law has been frequently misused since 1962, when it was first introduced¹⁸.

SUGGESTION & CONCLUSION

The very outmoded law of sedition harms the heart of Constitution and makes it necessary to be repealed or modified. The law evidently attacks the freedom of an individual and leaves no space for criticism against the government or higher authority. The very same law is being used as a weapon to forcefully make the public to be of the same opinion as decided and practiced by the higher authorities. India being a democratic country, the citizens are said to be the soul of the nation. The preamble to the Constitution declares India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity of the individual and unity and integrity of the nation. There is a huge space in the law as there is an absence of a mens rea requirement which entails that no conduct can constitute a crime unless it is accompanied by a guilty mind. The lack of an inbuilt mens rea requirement greatly magnifies the potentiality for misuse. To fill up this

¹⁸ Kishorechandra Wangkhemcha & Anr v UOI, WP (CrI) 106/2021.



gap, the 42nd Law Commission Report recommended the insertion of the phrase “intentionally or knowing it to be likely” into the construction of the section¹⁹.

Freedom of speech and expression is the heart of our constitution, the law of sedition is contrary to the same. Therefore, court shall decide the quantum of punishment based on the presence of mens rea standards. The objectives specified in the preamble constitute the basic structure of the Indian Constitution which cannot be amended. The opening and last sentences of the preamble: “We, the people... adopt, enact and give to ourselves this Constitution” signifies the power is ultimately vested in the hands of the people. Indian Constitution is considered to be ‘Of the people, for the people and by the people’; the very meaning of the democracy will be lost in coming time seeing that the democracy is becoming the sacrosanct concept which allows the hardship dictatorship of some leaders/ parties to call themselves the democracy. A citizen has a right to say or write whatever he likes about the Government, by way of criticism or comments so long as he did not incite people to resort to violence. It is necessary to strike a balance between the two important pillars of the country. Six decades after upholding the constitutional validity of Section 124A of the IPC, the Apex Court has agreed to examine whether the verdict in Kedar Nath Singh needs to be revisited and whether the provision of 'sedition' has lost its relevance in the present conditions. The bench after a brief hearing agreed to examine the plea and issued notice to the Centre seeking its response. The unfolds before the Apex Court, amid a backdrop of an increasing number of people being charged with sedition, the accused ranging from students to activists to journalists to political opponents.²⁰ Democracy is a living organ of Indian government and the essence of the same can prosper only if the laws are reinvented time to time.

¹⁹ G S Bajpai and Ankit Kaushik, Time to reform sedition law, *The Indian express*, 2nd July, 2021, <https://indianexpress.com/article/opinion/columns/sedition-law-supreme-court-vinod-dua-kedarnath-covid-19-7384890/>, accessed on 7th July, 2021.

²⁰ Ashima Obhan and Akansha Dua, Obhan & Associates, New Delhi, How Incumbent Is Section 124A Of The Indian Penal Code? – The Supreme Court Decides To Examine - Government, Public Sector – India, <https://www.mondaq.com/india/terrorism-homeland-security-defence/1065362/how-incumbent-is-section-124a-of-the-indian-penal-code-the-supreme-court-decides-to-examine>, 20th June, 2021.

